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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/309,128

05/10/99

FRANKENBACH

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7258XR

IM22/0823

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EXAMINER

HARDEE, J

ART UNIT

PAPER NUMBER

1751

DATE MAILED:

08/23/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/309,128

Applicant(s)

Frankenbach et al.

Examiner

John R. Hardee

Group Art Unit
1751



☒ Responsive to communication(s) filed on Jul 31, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-30 is/are pending in the application.

Of the above, claim(s) 6, 8-14, and 19-25 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5, 7, 15-18, and 26-29 is/are rejected.

☒ Claim(s) 30 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of di- and triesterquat fabric softeners, as well as the phase stabilizers recited at section D1 of claim 1 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the claimed fabric softeners are well known in the surfactant art and because it is not clear why a restriction is proper among stabilizers. This is not found persuasive because the reason for making the requirement was the sheer number of fabric softeners and stabilizers recited, as well as the vast number of permutations which can be generated among them.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. Applicant's amendments and arguments overcome the rejections made under this heading in the previous office action. Accordingly, they are withdrawn.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-5, 15-18 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al., US 5,759,900 for the reasons of record in the previous office action.

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5. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al., US 5,759,900 in view of Wahl et al., 5,545,340 for the reasons of record in the previous office action.

Allowable Subject Matter

6. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Reasons are of record in the previous office action.

Response to Arguments

7. Applicant's arguments filed July 31, 2000 have been fully considered but they are not persuasive.

Applicant argues that the amount of electrolyte in the compositions taught by Wahl is lower than that of the present claims. This is not persuasive because, regardless of what is in Wahl's examples, a range of 0-2% of electrolyte is clearly taught at col. 27, lines 66+. In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

Applicant argues that the amounts of principal solvent are lower than those disclosed in Wahl. This is not persuasive because Wahl discloses up to 40% of solvent. This reads on any

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amount of solvent from zero to 40%. Note Wahl's preferable and more preferable ranges of principal solvent concentration at col. 3, lines 13+.

Applicant argues that the Wahl reference does not teach that the principal solvent can have a ClogP value of -2.0 to 0.15 or 0.64-2.6. This is correct, but it is not persuasive because applicant's elected principal solvent has a ClogP value of 0.34, which is taught by the Wahl reference. Solvents in the lower and higher ranges have not been considered or searched.

Applicant argues that Wahl '340 does not teach the unique features of the present invention, therefore, claim 29 should be allowable over the combination of references. This is not persuasive because the combination of references nonetheless would lead the person of ordinary skill in the surfactant art to make a composition which reads on the limitations of this claim.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 7:30 until 4:00. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'J. Hardee', with a stylized, cursive script.

John R. Hardee
Primary Examiner
August 21, 2000